

**STATE OF INDIANA
DEPARTMENT OF STATE REVENUE**

IN REGARDS TO THE MATTER OF:

**SALLY ARNBO
5083 STONESPRING WAY
ANDERSON, IN 46012
DOCKET NO. 29-2004-0338-B**

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND PROPOSED DEPARTMENTAL ORDER**

An administrative hearing was held on Monday, January 31, 2005 and Tuesday, February 1, 2005 in the office of the Indiana Department of State Revenue, 100 N. Senate Avenue, Room N248, Indianapolis, Indiana 46204 before Bruce R. Kolb, Administrative Law Judge acting on behalf of and under the authority of the Commissioner of the Indiana Department of State Revenue.

Petitioner, Sally Arnbo, was represented by Marilyn A. Moores and Arend J. Abel of Cohen & Mallad, LLP, One Indiana Square, Suite 1400, Indianapolis, Indiana 46204. Attorney Doug Klitzke appeared on behalf of the Indiana Department of State Revenue.

A hearing was conducted pursuant to IC 4-21.5 et seq., evidence was submitted, and testimony given. The Department maintains a record of the proceedings. The transcript of the hearing was received by the Administrative Law Judge on February 24, 2005. A Supplemental Brief from the Department was received on March 18, 2005. A Supplemental Brief on behalf of the Petitioner was received on April 2, 2005. Being duly advised and having considered the entire record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law, and Proposed Departmental Order.

REASON FOR HEARING

An investigation was conducted by the Criminal Investigation Division of the Indiana Department of Revenue and was completed on June 15, 2004. The Department issued a letter to Petitioner dated September 3, 2004, which stated, "[T]here has been a failure by the licensed operators, Tom & Sally Arnbo, to properly carry out their responsibilities of supervising the charity gaming operations of Anderson Hoop Shooters, Inc. ...Tom & Sally Arnbo will not be considered as "operators" on any charity gaming application either now or in the future." The Petitioner protested the Department's decision in a timely manner.

FINDINGS OF FACTS

- 1) The Criminal Investigation Division of the Indiana Department of Revenue (hereinafter referred to as Department) conducted an investigation of Anderson Hoop Shooters, Inc. and Petitioner in 2002. (Record at 113).
- 2) Anderson Hoop Shooters, Inc. (hereinafter referred to as Anderson) runs Slam Dunk Bingo. (Record at 31).

- 3) Slam Dunk Bingo was located at 121 Federal Drive, Chesterfield, Indiana 46017. (Department's Exhibit #1).
- 4) Petitioner was listed as an operator for Anderson during the periods at issue. (Department's Exhibits #2, 3, and 4).
- 5) An operator is responsible for conducting an allowable event for a qualified organization under this article in accordance with Indiana law. (See IC 4-32-6-17).
- 6) Anderson's CG-8s (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the periods September 1, 2000 to August 31, 2001 and September 1, 2001 to August 31, 2002 list its principal office address as 1017 W. 19th Street, Anderson, Indiana 46011. (Department's Exhibits #6 and 8).
- 7) Anderson's CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the period September 1, 2002 to August 31, 2003 list its principal office address as 425 Sylvan Drive, Anderson, Indiana 46012. (Department's Exhibit #11).
- 8) Anderson's CG-8s (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the periods September 1, 2000 to August 31, 2001 and September 1, 2001 to August 31, 2002 lists as its address where the charity gaming financial records are maintained as 1017 W. 19th Street, Anderson, Indiana 46011. (Department's Exhibits #6 and 8).
- 9) Anderson's CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the period September 1, 2002 to August 31, 2003 lists as its address where the charity gaming financial records are maintained as 425 Sylvan Drive, Anderson, Indiana 46012. (Department's Exhibit #11).
- 10) Anderson's CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the period September 1, 2000 to August 31, 2001 lists Tom Arnbo as the name of the person maintaining their financial records. It also states that his address is P.O. Box 215, Chesterfield, Indiana 46017. (Department's Exhibit #6).
- 11) Anderson's CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the period September 1, 2001 to August 31, 2002 lists Tom Arnbo as the name of the person maintaining their financial records. It also states that his address is 5083 Stonespring Way, Anderson, Indiana 46012. (Department's Exhibits #8).
- 12) Anderson's CG-8 (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the period September 1, 2002 to August 31, 2003 lists Philip D. Foley (hereinafter referred to as Dr. Foley) as the name of the person maintaining these financial records. It also states that his address is 425 Sylvan Drive, Anderson, Indiana 46012. (Department's Exhibit #11).
- 13) The Department alleges that Anderson failed to report \$3,592,499 in gross revenue from the sale of pull tabs for the periods ending August 31st of 2001, 2002, and 2003. (Record at 147).
- 14) Dr. Foley signed Anderson's CG-2Rs (Annual Bingo Renewal Application) for the years 2001, 2002, and 2003. (Department's Exhibits #2, 3, and 4).
- 15) Dr. Foley signed Anderson's CG-8s (Indiana Annual Bingo and/or Pull Tab License Financial Report) for the accounting periods September 1, 2000 to August 31, 2001; September 1, 2001 to August 31, 2002; and September 1, 2002 to August 31, 2003. (Department's Exhibits #6, 8, and 11).

- 16) Tom Arnbo's signature only appears on Anderson's CG-DIST, (Indiana Department of Revenue Charitable Contribution Distribution Listing) as the preparer of the schedule, for the period September 1, 2002 to August 31, 2003. (Department's Exhibit #11).
- 17) Petitioner's signature appears on Anderson's CG-INV (Charity Gaming Ending Inventory Statement) for the period September 1, 2001 to August 31, 2002. (Department's Exhibits #8).
- 18) Petitioner's signature appears on Anderson's CG-INV (Charity Gaming Ending Inventory Statement) for the period September 1, 2002 to August 31, 2003. (Department's Exhibits #11).
- 19) During cross examination Petitioner was asked,
 "Q And the bingo applications and the reapplications that we had introduced into evidence earlier, did you fill those applications out?
 A Pretty much, yes. In total, yes, pretty much, but not total.
 Q What part didn't you fill out?
 A Well, I didn't fill the distribution, the part that Dr. Foley gave to Tom. Other than that, I pretty much filled the rest of it out." (Record at 278).
- 20) Anderson's building was prone to water damage, especially where the charity gaming supplies were kept, as evidenced by Petitioner's Exhibits BB through KK.
- 21) Petitioner, when asked, "how bad would you say the water problem was before the landlord made the repairs?" stated, "The water problem was terrible and we complained to him many, many times about it, showed it to him, you know, and said, you know, you've got water, you know, there were times when literally we could see it running and we put garbage cans up when it was dripping out of the ceiling, so it was bad. It was bad. Sometimes worse than other times. (Record at 241).
- 22) Petitioner testified under oath that as many as two thousand (2,000) boxes of pull tabs were discarded in the trash. (Record at 239).
- 23) Petitioner testified under oath that no inventory of discarded pull tabs was ever undertaken. (Record at 301).
- 24) The Department asked the Petitioner, "During the time that you had the losses from the spoiled pull tabs, did you ever consider asking the Department, 'How should I account for these?'" Petitioner responded, "No sir, I didn't. I asked the distributors, 'Would you take this back' and, or course, they wouldn't and I didn't know what else to do with them and I never thought about asking the Department, no." (Record at 289).
- 25) Petitioner was asked the following:
 Q Some of the income from some of the pull tabs was reported as bingo income?
 A But as I explained, that was in 2000, 2001, you know, when this was a new ticket and at that point I didn't know where else to put it. I was not – I could not list it as total gross income, because I wasn't listing total gross income, I was listing profit. (Record at 294).
- 26) Petitioner testified under oath that no one was held accountable for discarding of pull tabs in the trash. (Record at 302).
- 27) Petitioner testified under oath that there was no financial oversight and no one questioned the discarding of pull tabs. (Record at 302).

- 28) Petitioner testified under oath that insurance to cover the loss of pull tabs was considered cost prohibitive. (Record at 303).
- 29) Petitioner testified under oath that moving to another location was never an option. (Record at 303).
- 30) Petitioner testified under oath that the discarded boxes of pull tabs were not accounted for in Anderson's annual renewals or financial statements. (Record at 239-240).
- 31) Petitioner as an operator for a not-for-profit organization, licensed by the State of Indiana, allowed water damaged charity gaming supplies to be discarded by workers and other individuals without keeping any records as to which games or how much was destroyed. (Record at 239-240).
- 32) Lack of proper record keeping and reporting regarding lost, stolen, or destroyed games was the impetus behind the Department's initial investigation of Anderson.
- 33) Petitioner did not reconstruct Anderson's pull tab records, Petitioner's Exhibits X, Y, and Z, until November of 2004. (Record at 301).
- 34) A serious reconstruction and reconciliation by Petitioner of Anderson's charity gaming financial records did not occur until approximately two (2) years after the Department's initial investigation began.
- 35) The lack of proper financial record keeping and the failure to accurately report lost, stolen, destroyed, or giveaway games in its filings with the Department, resulted in as much as \$3,592,499 of underreported pull tabs for the periods ending August 31st of 2001, 2002, and 2003.
- 36) The Petitioner, Tom Arnbo, and Phillip Foley were the only individuals licensed by the State of Indiana as operators for Anderson. (Department's Exhibit #1).
- 37) The Petitioner as an operator for a not-for-profit organization, licensed by the State of Indiana, allowed charity gaming to take place without a qualified operator being present. (Record at 200).
- 38) Ms. Broadwater admitted calling bingo, a job only an operator listed on a CG-13 (Annual Bingo License) is allowed to undertake pursuant to IC 4-32-6-17. (Record at 314-315).
- 39) Mr. Vanchina admitted calling bingo, a job only an operator listed on a CG-13 (Annual Bingo License) is allowed to undertake pursuant to IC 4-32-6-17. (Record at 322).
- 40) Calling bingo is when the operator of the bingo game announces a letter and number combination that has been drawn. (See IC 4-32-6-3).
- 41) Petitioner contends that she requested Lori Broadwater's name be added as an operator on Anderson's charity gaming license. (Record at 274).
- 42) Petitioner's unsigned letters dated January 12, 2004, February 27, 2004, and June 29, 2004 were introduced into evidence to show her belief that a lack of response by the Department to her requests was a tacit approval. (Petitioner's Exhibits WW, VV, and UU).
- 43) Petitioner's reliance upon the Department's silence is incorrect. An individual cannot undertake the duties of an operator unless their name appears upon the charity gaming license. If a qualified organization requests an individual be added to its license as an operator, the Department will add that person's name and issue a revised license if they meet the statutory requirements.

- 44) It is Petitioner's responsibility as an operator for a not-for-profit organization, licensed by the State of Indiana, to ensure that a qualified operator is always present during charity gaming events, and to make sure that only a qualified operator is allowed to run the charity gaming events.
- 45) Petitioner as an operator for a not-for-profit organization, licensed by the State of Indiana, failed to ensure that Ms. Broadwater's and Mr. Vanchina's names were added to Anderson's license and that the revised license would be posted pursuant to 45 IAC 18-2-4.

STATEMENT OF LAW

- 1) The Department's hearings are governed by IC 4-21.5 exclusively. (See IC 4-32-8-5. *As added by P.L.188-2003, SEC.3.*)
- 2) IC 4-21.5-3-25(b) provides in pertinent part, "The administrative law judge shall regulate the course of the proceedings in ...an informal manner without recourse to the technical, common law rules of evidence applicable to civil actions in the courts..."
- 3) IC 4-32-6-17 states, "'Operator' means an individual who is responsible for conducting an allowable event for a qualified organization under this article in accordance with Indiana law."
As added by P.L.24-1992, SEC.47.
- 4) IC 4-32-9-23 states, "An operator or a worker may not be a person who has been convicted of or entered a plea of nolo contendere to a felony committed in the preceding ten (10) years, regardless of the adjudication, unless the department determines that:
 - (1) the person has been pardoned or the person's civil rights have been restored; or
 - (2) subsequent to the conviction or entry of the plea the person has engaged in the kind of good citizenship that would reflect well upon the integrity of the qualified organization and the department." *As added by P.L.24-1992, SEC.50.*
- 5) IC 4-32-12-1(a) provides in pertinent part, "The Department may suspend or revoke the license or levy a civil penalty against a qualified organization or an individual under this article..."
- 6) IC 4-32-12-2 states, "The department may impose upon a qualified organization or an individual the following civil penalties:
 - (1) Not more than one thousand dollars (\$1,000) for the first violation.
 - (2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.
 - (3) Not more than five thousand dollars (\$5,000) for each additional violation."
- 7) IC 4-32-12-3 states, In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:
 - (1) Suspend or revoke the license.
 - (2) Lengthen a period of suspension of the license.
 - (3) Prohibit an operator or an individual who has been found to be in violation of this article from associating with charity gaming conducted by a qualified organization.

- (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day the civil penalty goes unpaid.

CONCLUSIONS OF LAW

- 1) The purpose of Indiana's charity gaming statutes is to permit a licensed qualified charitable organization to conduct gambling as a fund raising activity for lawful purposes of the organization.
- 2) To this end, the Indiana Department of State Revenue is responsible for ensuring the security and integrity of the operation of games of chance under Article 32.
- 3) Pursuant to IC 4-32-9-17 a qualified organization shall maintain accurate records and reports of all financial aspects of an allowable event under Article 32.
- 4) The Petitioner allowed charity gaming to take place without a qualified operator being present.
- 5) Petitioner as an operator for a not-for-profit organization, licensed by the State of Indiana, was responsible for ensuring that a qualified operator was always present during charity gaming events, and to make sure that only a qualified operator was allowed to run the charity gaming events.
- 6) Petitioner as an operator for a not-for-profit organization, licensed by the State of Indiana, failed to ensure that Ms. Broadwater's and Mr. Vanchina's names were added to Anderson's license and that the revised license would be posted.
- 7) Petitioner as an operator for a not-for-profit organization, licensed by the State of Indiana, allowed water damaged charity gaming supplies to be thrown out by workers and other individuals without keeping any records as to which games or how much was destroyed.
- 8) The lack of proper financial record keeping and the failure to accurately report lost, stolen, destroyed, or giveaway games in its filings with the Department, resulted in as much as \$3,592,499 of underreported pull tabs for the periods ending August 31st of 2001, 2002, and 2003.
- 9) Petitioner's inability to accurately account for Anderson's lost, stolen, destroyed, or giveaway pull tabs is a direct reflection on how the organization is conducting its gaming. The burden cannot be shifted to the Department by arguing that its attempt at reconstruction is flawed. The burden rests with the Petitioner to show that the financial filings sent to the Department accurately reflect its fund raising activities. In this case they did not.
- 10) Pursuant to IC 4-32-12-3 the Department may prohibit an individual who has been found to be in violation of this article (IC 4-32) from associating with charity gaming conducted by a qualified organization.
- 11) IC 4-32-6-17 defines the term "Operator."
- 12) Petitioner was listed as an operator for Anderson during the periods at issue.
- 13) An operator is responsible for conducting an allowable event for a qualified organization under this article in accordance with Indiana law.
- 14) The Department, in its letter dated September 3, 2004, stated that the Petitioner will not be considered as an operator on any charity gaming application either now or in the future.

- 15) This is in effect a perpetual ban against Petitioner ever participating as an operator.
- 16) Even an individual, who has been convicted of or entered a plea of nolo contendere to a felony, may once again participate in charity gaming once the ten (10) year restriction has passed.
- 17) The Indiana Statutes and Administrative Rules governing charitable organizations and charity gaming do not provide for an unlimited suspension.
- 18) Therefore, the maximum length of suspension cannot exceed ten (10) years.

PROPOSED DEPARTMENTAL ORDER

Following due consideration of the entire record, the Administrative Law Judge orders the following:

The Department's decision to suspend Petitioner is hereby upheld. However, the Petitioner's suspension cannot exceed ten (10) years. The Department is therefore directed to modify Petitioner's suspension accordingly.

- 1) Administrative review of this proposed decision may be obtained by filing, with the Commissioner of the Indiana Department of State Revenue (100 North Senate Avenue, Room N248, Indianapolis, Indiana 46204-2253), a written document identifying the basis for each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).
- 2) Judicial review of a final order may be sought under IC 4-21.5-5.

THIS PROPOSED DEPARTMENTAL ORDER SHALL BECOME THE FINAL ORDER OF THE INDIANA DEPARTMENT OF STATE REVENUE UNLESS OBJECTIONS ARE FILED WITHIN FIFTEEN (15) DAYS FROM THE DATE THE ORDER IS SERVED ON THE PETITIONER.

Dated: _____

Bruce R. Kolb / Administrative Law Judge